

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PHYLLIS DRUMMOND,	§	
	§	No. 530, 2004
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware, in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	No. 0311018699A
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: July 19, 2005  
Decided: August 24, 2005

Before **HOLLAND, BERGER, and RIDGELY**, Justices.

**O R D E R**

This 24<sup>th</sup> day of August 2005, on consideration of the parties' briefs, it appears to the Court that:

(1) The defendant-appellant, Phyllis Drummond, appeals from her convictions following a jury trial in the Superior Court of robbery in the first degree and wearing a disguise during the commission of a felony. Drummond challenges certain evidentiary rulings and the denial of her motion for a judgment of acquittal. We find no merit to her claims. Accordingly, we affirm.

(2) On November 22, 2003, a Wilmington Trust Bank located in Millsboro was robbed. Darlene Hayes, a bank employee, was approached by a person she thought to be a short black male. The suspect was carrying a gun and wearing plastic gloves, a blue and white plaid jacket and a baseball cap. Hayes' coworkers observed the perpetrator flee in what they believed appeared to be a green Toyota Camry. Later in the day a surveillance tape of the robbery was broadcast on television. Sheila Hicks, Drummond's sister, saw the tape and told her coworker, Charlotte Ponson, that the robber appeared to be Drummond. Ponson later called the police and told them about her conversation with Hicks. Victor Frye also identified Drummond as the robber from the broadcast.

(3) On November 24, 2003, the police arrived at Drummond's residence. They obtained written consent from Percy Giddens, Drummond's boyfriend and the lessor of the residence, to search the premises. Before searching Giddens and Drummond's shared bedroom, the police obtained written consent from Drummond. The police recovered a blue and white plaid jacket, a blue baseball cap and a BB gun that was a replica of a semi-automatic pistol. Drummond was then taken to the police station where she confessed to the crime. Drummond's son also told the police that Drummond had committed the robbery.

(4) Prior to trial, Drummond moved for the confession and the items recovered during the search to be suppressed because the police lacked probable cause. The motion was denied by the trial court. During trial, the tape of Drummond's interrogation was played for the jury. Over Drummond's objection the tape and a transcript of the interview were admitted into evidence. At the close of the State's case, Drummond filed a motion for judgment of acquittal. The motion was denied by the trial court.

(5) Drummond raises three arguments on appeal. She argues that the trial court erred in (1) denying her motion to suppress; (2) admitting the interview transcript; and (3) denying her motion for judgment of acquittal.

(6) Drummond first argues that the trial court erred in admitting into evidence her statements at the police station and the items seized from her residence. Drummond argues that the police lacked probable cause and, therefore, the search was unconstitutional. This Court reviews the trial court's determination of probable cause *de novo*.<sup>1</sup> The basis of Drummond's argument is that the bank employees described the robber as being a male and identified the getaway car as a Toyota. Drummond is a female who drives a Subaru. Despite these discrepancies there was probable cause. In terms of build and height, Drummond matched the physical description given by

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<sup>1</sup> *Lopez v. State*, 861 A.2d 1245, 1248 (Del. 2004).

Hayes. Hicks and Frye also identified Drummond as the robber from the surveillance video. At the time of the search the police also were aware that a similar robbery had occurred in which a black female, with a description similar to that of Drummond, had disguised herself as a black male and driven a car similar to Drummond's. Given the totality of the circumstances,<sup>2</sup> the trial court correctly determined that probable cause existed to arrest Drummond.

(7) Drummond next argues that the trial court erred when it admitted into evidence a transcript of her police interrogation without addressing its accuracy or adequately weighing its probative value. We review the trial court's decision admitting evidence for abuse of discretion.<sup>3</sup> Drummond argues, based on *Atkins v. State*,<sup>4</sup> that the trial court erred because it did not explicitly rule on the accuracy of the transcript. This argument is without merit because, unlike this case, in *Atkins* the prosecution only introduced the transcripts, and not the actual recordings.<sup>5</sup> Further, *Atkins* only states that the trial court must be "satisfied with the accuracy of the transcripts."<sup>6</sup> In this case, the trial court read the transcript while listening to the recording and heard testimony that the transcript was accurate. It can be inferred that

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<sup>2</sup> *Id.* (explaining that probable cause "depends upon the totality of the circumstances").

<sup>3</sup> *Longfellow v. State*, 688 A.2d 1370, 1372 (Del. 1997).

<sup>4</sup> 523 A.2d 539 (Del. 1987).

<sup>5</sup> *Id.* at 544.

<sup>6</sup> *Id.*

the trial court was “satisfied with the accuracy of the transcript.” Drummond’s contention that the trial court failed to adequately balance the probative value of the transcript with the dangers of cumulated evidence and undue emphasis on her confession is also without merit. The record indicates that the trial court did perform this balancing. The trial court stated that it had considered these issues and after reviewing *Atkins* and the tape had determined that the transcript would be useful to the jury, because much of the tape was difficult to understand. We find that the trial court did not abuse its discretion in admitting the transcript into evidence along with the tape.

(8) Drummond finally argues that the trial court erred in not granting her motion for judgment of acquittal. This Court reviews *de novo* the trial court’s denial of a motion for judgment of acquittal “to determine whether any rational trier of fact, viewing the evidence in the light most favorable to the State, could find [the defendant] guilty beyond a reasonable doubt of all the elements of the crime.”<sup>7</sup> Drummond argues that because the bank employees identified the suspect as a male and the make of the getaway car as a Toyota the trial court should have granted her motion for judgment of acquittal. As the trial court noted in its denial of Drummond’s

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<sup>7</sup> *Priest v. State*, 2005 Del. LEXIS 253, at \*6 (citing *Hardin v. State*, 844 A.2d 982, 989 (Del. 2004)).

motion, Drummond confessed to the crime, Drummond's son said she committed the robbery, her sister and another person identified her as the robber and Drummond's hat, coat and BB gun were consistent with what the bank teller saw. Given this evidence, the trial court properly denied Drummond's motion for a judgment of acquittal.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice